Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of	)	
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
Truth-in-Billing and Billing Format	)	CG Docket No. 98-170
	)	
ITTA Petition for Declaratory Ruling Regarding TRS Line Item Descriptions	)	

REPLY COMMENTS OF AT&T

The nearly unanimous comments filed demonstrate that the Commission should issue a declaratory ruling confirming that carriers may recover TRS fund contributions through a line item on customers' invoices. The providers of interstate services and associations representing such providers that filed comments confirm that use of a composite line item to recover costs for interstate TRS is widespread industry practice, consistent with a reasonable interpretation of the statute and the Commission's orders.

Notably, the *only* opposition to ITTA's petition comes from Kairos Partners, which works on a "contingency fee" basis to "recover [telecom] fees [customers] may have already paid."[1] Kairos has been harassing providers,[2] including AT&T, pressing for refunds based on the same

[1] Kairos Partners, *About: Services*, *available at* http://kairospartnersllc.net/ABOUT%20US/#SERVICES (last visited June 29, 2018) ("We work on a contingency fee model . . . our fee comes directly from your savings.").

[2] *See, e.g.*, CenturyLink Comments at 5 ("The billing consultant's claims of illegal conduct as a result of recovering interstate TRS fund contributions via a line item have consumed the attention of customers and providers alike without benefit to either.").

erroneous reading of the statute and the Commission's orders that it advances in its comments here on behalf of the so-called "Enterprise Users Commenters."

The Commission should use its authority to issue a declaratory ruling confirming that the current, widespread industry practice conforms to the Commission's rules and orders. Contrary to Kairos's claims, such a declaratory ruling is well within the Commission's authority to interpret ambiguous statements in prior orders. And, as AT&T and other commenters have shown, such an interpretation is consistent with a reasonable reading of those ambiguous statements and avoids serious constitutional problems that would arise from Kairos's reading of those orders.

DISCUSSION

A. A Declaratory Ruling is the Proper Vehicle to Resolve this Issue

Every commenter, including Kairos, agrees that the Commission's references to "a specifically identified charge on subscribers' lines" in its *TRS I Order*[3] and *TRS II Order*[4] were not models of clarity. As CenturyLink observes, in the *TRS I Order*, the Commission "concluded it lacked sufficient information to establish [a cost-recovery] mechanism" for carriers providing TRS and "did not otherwise explain" its statement about a specifically identified charge on subscribers' lines.[5] CTIA and USTelecom agree, noting that the Commission has "never elaborated upon . . . [the] unexplained" statements,[6] and that "[i]t is not clear why the Commission"

[3] *TRS I Order* ¶ 34.

[4] *TRS II Order* ¶ 22 (same, but replacing the word "subscribers' " with "end user's").

[5] CenturyLink Comments at 2-3.

[6] CTIA Comments at 4.

made the pronouncements.[7] And Kairos likewise concedes this ambiguity, positing that later orders have "clarif[ied] [the *TRS I Order* and *TRS II Order*] to avoid misinterpretation."[8]

Even if the ambiguous statements in the *TRS I Order* and *TRS II Order* could be read, as Kairos does, to have promulgated — without any discussion, stated rationale, or statutory basis — a broad prohibition against collecting TRS costs through line items of any type, that reading is not compelled.[9] Nor do the Commission's statements in footnotes of various orders preclude the Commission from finding that those initial statements in the *TRS I Order* and *TRS II Order* were ambiguous. As AT&T showed in its Comments, every one of those footnotes merely paraphrased the earlier orders and cited back to one or both of them in passing.[10]

Therefore, the ruling ITTA seeks here is an interpretive one, which the Commission can issue without using the notice-and-comment process required for legislative rules.[11] As the Supreme Court has explained, agencies have the power to interpret their rules and orders, and courts will defer to reasonable interpretations of ambiguous rules and orders.[12] Moreover, even if the Commission were to treat the various footnotes in its orders that paraphrased and cited back to the *TRS I Order* or *TRS II Order* as having interpreted those earlier orders, the Commission is

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[7] USTelecom Comments at 2; *see also* AT&T Comments at 4.

[8] Comments of "The Enterprise Users Commenters" at 6 ("Kairos Comments").

[9] *See* AT&T Comments at 7; CenturyLink Comments at 1; CTIA Comments at 2.

[10] *See* AT&T Comments at 6 (referring to the "*Second Truth-in-Billing Order*" and the "*TRS 2004 Order*"); *see also* Further Notice of Proposed Rulemaking, *Universal Service Contribution Methodology, A National Broadband Plan for Our Future*, 27 FCC Rcd 5357, ¶ 394 n.617 (2012) (citing the *TRS II Order*).

[11] *Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199, 1204 (2015) ("[U]nless another statute states otherwise, the notice-and-comment requirement does not apply to interpretative rules.").

[12] *See Talk Am., Inc. v. Michigan Bell Tel. Co.*, 564 U.S. 50, 59 (2011).

authorized to depart from that interpretation in a declaratory ruling. As the Supreme Court recently held, "[b]ecause an agency is not required to use notice-and-comment procedures to issue an initial interpretive rule, it is also not required to use those procedures when it amends or repeals that interpretive rule."[13] In short, there is no procedural impediment to granting ITTA's petition for declaratory ruling.

B. None of Kairos's Arguments Compels the Commission to Prohibit Composite TRS Line Items

Even if the Commission were to conclude that its prior orders prohibit stand-alone line items, it still can and should interpret those orders as allowing carriers to recover such fees through composite line items that are consistently used in the industry today. Kairos provides no sound reason to conclude otherwise.

First, as AT&T explained in its comments, these composite line items can be applied to all customers of interstate communications service and, therefore, are consistent with 47 U.S.C. § 225(d)(3)(B) and the regulation mandating that TRS costs be spread across "all subscribers for every interstate service."[14] Kairos does not dispute this point. In fact, its comments are devoid of any reference to the applicable statutory provisions and regulations.

Second, these composite line items address any policy concerns the Commission could have had for disfavoring stand-alone TRS line items: unlike many state relay surcharges at the time of the ADA's enactment, these composite line items could not credibly be perceived as offensive or mistaken for a charge for a specifically purchased service.[15] Kairos's citations to

[13] *Perez*, 135 S. Ct. at 1206.

[14] *See* AT&T Comments at 7-8.

[15] *See id.* at 8-9.

comments in the 1990s from advocates for individuals with hearing loss confirm that the proposals that were before the Commission in *TRS I* had nothing to do with composite line items. Indeed, the very comments from National Center for Law and the Deaf ("NCLD") in the *TRS I* docket that Kairos cites did not propose a ban on either stand-alone or composite line items for recovering interstate TRS costs, but only that both certified states and common carriers be subject to a requirement that "labels not be offensive."[16] The *TRS I Order* should not be misconstrued nearly three-decades later to announce a far more restrictive prohibition.[17]

Third, as ITTA correctly observed in its Petition for Declaratory Ruling, the use of composite line items to recover interstate TRS costs is "widespread industry practice" and is consistent with the Commission's own statements reflecting this practice.[18] Kairos provides no explanation for the Commission's statement that the costs of Video Relay Service, a form of TRS subject to § 225, "are passed on to all consumers of telecommunications service by intrastate and interstate common carriers, *either as a surcharge* on their monthly service bills *or* as part of the

[16] NCLD Comments at 42, CC Dkt. No. 90-571 (Jan. 15, 1991) ("The FCC also appears to recognize this, and proposes a requirement that certified states not be allowed to label funding mechanisms in a manner that offends the public. However, the requirement that these labels not be offensive should not only be imposed on the states, but on the common carriers as well.") (footnote and emphases omitted). *See also* AT&T Comments at 8, n.27 (explaining NCLD's proposal and providing an example of the type of label that would be considered offensive).

[17] Kairos's citations to comments by Telecommunications for the Deaf, Inc. and NCLD in September 1991 and April 19, 1993, provide no support for the idea that the Commission imposed a ban on composite line items in its *TRS I Order*. *See* Kairos Comments at 13-14. Those comments were made *after* the Commission issued its *TRS I Order*, and merely repeat the ambiguous language the Commission is seeking to interpret now. *See id.* at 14 (emphasizing the phrase "the Commission's decision to prohibit carriers from identifying interstate TRS costs as specific charges on end user lines" in NCLD's comments).

[18] ITTA Petition at 1.

rate base for the state's intrastate telephone services."[19] Kairos attempts to rebut ITTA's contention that composite line items are consistent with widespread industry practice by citing comments filed by COMPTEL, and IDT Telecom *et al.*, in previous proceedings.[20] Those comments, however, do not address the acceptability of composite line-items. Moreover, the unanimous comments of providers of interstate services and associations representing such providers in *this* docket, confirm the ubiquity of the approach.

Fourth, as AT&T explained in its comments, reading the Commission's prior orders to prohibit not only stand-alone TRS line items but also composite line items would raise serious constitutional concerns under the First Amendment that the Commission should avoid.[21]

CONCLUSION

For these reasons, the Commission should issue a declaratory ruling clarifying that carriers may indeed recover costs of TRS through line items.

[19] Further Notice of Proposed Rulemaking, *Structure and Practices of the Video Relay Service Program*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 26 FCC Rcd 17367, 17409, ¶ 103 n.209 (2011) (emphases added).

[20] Kairos Comments at 8-10.

[21] AT&T Comments at 10-11.

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